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Testimony of Henry M. Beck, Jr.  
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**IN SUPPORT OF SENATE BILL 963  
AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT**

Judiciary Committee  
March 20, 2009

Senator McDonald, Representative Lawlor, members of the Judiciary Committee, thank you for the opportunity to appear before the committee and express our **SUPPORT for Senate Bill 963**, An Act Concerning the Connecticut Business Corporation Act. On behalf of the section, we wish to thank the committee for raising this bill again. We believe the bill is important to Connecticut corporations.

My name is Henry M. Beck, Jr. I am a partner with Halloran & Sage in Hartford practicing in the areas of business and corporate law. I am the Vice Chair and legislative liaison of the Business Law Section of the Connecticut Bar Association (CBA). The Business Law Section includes 630 Connecticut attorneys interested in business and corporate law issues.

Senate Bill 963 is the same bill as Senate Bill 440 that was favorably reported upon by this Committee in the last session. The legislation is more important than ever to help Connecticut retain the few remaining public corporations organized under the laws of Connecticut rather than the laws of other states that are perceived as having more modern corporate statutes, like Delaware.

During last year's legislative session, the CBA Business Law Section discussed Senate Bill 440 with the offices of the Secretary of the State and the Connecticut Business and Industry Association. Neither group objected to the proposed legislation. We do not believe that either the Secretary of State or the Connecticut Business and Industry Association has changed its position.

Senate Bill 963 would amend the Connecticut Business Corporation Act (CBCA) to adopt recent changes to the Model Business Corporation Act (MBCA) concerning:

1. Appraisal rights,
2. Shareholder actions without a meeting,
3. Majority voting for directors,
4. Definition of expenses,
5. Notices to shareholders with a common address,

6. Judicial dissolutions,
7. Mergers of subsidiaries, and
8. Electronic posting of annual financial statements.

In addition, upon amendment as requested below, the bill would permit rather than require Boards of Directors to consider the interests of constituencies other than shareholders by corporate directors when evaluating a business combination. These other constituencies include employees, customers, creditors, suppliers and the community at large.

Connecticut adopted the MBCA in 1994. This bill is part of the ongoing process of updating Connecticut's corporation statutes and keeping them current with the MBCA. We would like to emphasize a few provisions that are especially important this year to public corporations that have chosen to be organized under Connecticut law. These provisions will let these corporations comply with current Securities and Exchange Commission rules that are available to corporations organized under the laws of Delaware and other states with modern corporation statutes.

First, many shareholders today are asking public corporations to allow election of directors by majority rather than mere plurality vote, that is, to require that the votes cast in favor of a particular director exceed the votes cast against. Under current Connecticut law, majority voting requires amendment of the Certificate of Incorporation, a burdensome process. Our proposed amendment adopts language from the current Model Business Corporation Act that would permit majority voting if permitted under the corporation's bylaws.

Second, the SEC now allows corporations to save money and paper by mailing only one copy of financial statements to certain shareholders who share a single household. Again following the MBCA, we ask that Connecticut corporations be permitted to "household" their mailings for shareholders who consent to this.

Third, the SEC now allows corporations to make available their annual reports electronically through compliance with the so-called "notice and access" rules. Our bill would make this electronic transmission of annual reports available to corporations organized under Connecticut law in compliance with SEC rules.

There are other advantages to Connecticut's adoption of the MBCA in its most current version. First, the model act promotes uniformity among the states. As Connecticut is a small state with relatively little corporate case law, case law from other states can provide valuable insight to assist with interpreting the statute. Second, like the Uniform Commercial Code, the MBCA has an official commentary. These comments are a useful source of information to lawyers and the courts about the meaning and interpretation of the law. As the MBCA is updated, the official comments are updated as well.

The bill itself is quite lengthy but the changes fall into several categories and can be summarized fairly succinctly. The bill:

- clarifies the information to be included in the form supplied to shareholders with notice of the availability of appraisal rights;
- simplifies the procedure for shareholder action by written consent of fewer than all of the shareholders;
- provides that if directors are elected by written consent, a corporation is not required to hold an annual meeting of the shareholders;
- adopts a universal definition of "expenses" and makes other conforming revisions to the CBCA to reflect this definition;
- limits shareholder suits for the judicial dissolution of a corporation to private corporations and affords shareholders the right to seek judicial dissolution when actual or threatened irreparable injury to the corporation is demonstrated in the context of a directors' deadlock, and
- clarifies that a domestic parent corporation may merge a subsidiary in which it has 90 percent of the voting power into itself or into another such subsidiary without the approval of the Board of Directors or shareholders of the subsidiary unless the certificate of incorporation provides otherwise or, in the case of a foreign subsidiary, such foreign subsidiary's jurisdiction so requires.

As noted, this bill is also designed to permit public companies incorporated in Connecticut to make available their annual financial statements on the Internet, in accordance with new SEC rules, rather than to mail their financial statements to shareholders. This language is not taken from the MBCA, but it addresses a concern of Connecticut public corporations wishing to follow SEC rules on delivery of financial statements. This change is expected to save Connecticut public corporations substantial costs for printing and mailing annual reports that public corporations organized under other state laws need not incur. We believe this is an important amendment to the CBCA.

The CBA submitted another bill affecting Connecticut corporations last year, Senate Bill 441. This bill was incorporated with SB 440 last year after unanimous approval in Judiciary and both bills were then combined into File No. 423 and was approved in the Senate, but did not have enough time in the Session to go to the House for discussion. However, in this year's drafting of Senate Bill 963, the final section of File No. 423, which was originally Senate Bill 441, was omitted.

We respectfully request the Committee to amend Senate Bill 963 to add the final section of last year's File No. 423 which I have included as the last page of my testimony. The amendment would give directors the freedom to consider other constituencies in the context of a business combination. We believe this bill will make Connecticut a more attractive state for public corporations considering whether to organize under Connecticut law or to change their state of organization to Delaware or another jurisdiction.

This amendment is designed to cure an unusual problem arising under our statutes dealing with business combinations. Section 33-756(d) currently requires directors of Connecticut public corporations considering sale to a third party or certain other business combinations to consider the impact on multiple constituencies, including employees, customers, creditors, suppliers and the community at large. It will often be appropriate for directors to consider these other constituencies in the context of a business combination. However, Connecticut is the only state that *requires* rather than *permits* directors to consider each of these other constituencies. This imposes a burden on directors of Connecticut corporations that directors of corporations organized under other state laws do not face. There are no standards to measure how a director fulfills his or her duties under this section. It is difficult to advise directors of Connecticut corporations on how to fulfill this statutory mandate.

We believe that Senate Bill 963, together with this amendment, is necessary to ensure that Connecticut's corporate statutes remain current and up to date.

Thank you for the opportunity to appear before the committee. We appreciate your listening. We would be pleased to answer any questions you may have.

**PROPOSED AMENDMENT TO SB 963**

**---- Insert after Section 30 ----**

*Subsection (d) of section 33-756 of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2009):*

*(d) For purposes of sections 33-817, 33-830, 33-831, 33-841 and 33-844, a director of a corporation which has a class of voting stock registered pursuant to Section 12 of the Securities Exchange Act of 1934, as the same has been or hereafter may be amended from time to time, in addition to complying with the provisions of subsections (a) to (c), inclusive, of this section, [shall] may consider, in determining what he or she reasonably believes to be in the best interests of the corporation, (1) the long-term as well as the short-term interests of the corporation, (2) the interests of the shareholders, long-term as well as short-term, including the possibility that those interests may be best served by the continued independence of the corporation, (3) the interests of the corporation's employees, customers, creditors and suppliers, and (4) community and societal considerations including those of any community in which any office or other facility of the corporation is located. A director may also in his or her discretion consider any other factors he or she reasonably considers appropriate in determining what he or she reasonably believes to be in the best interests of the corporation.*

